

OCT 27 1997

DATE

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-058-01-H

FILED

THRESSA D. DORSEY
Defendant.

OCT 22 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, THRESSA D. DORSEY, was represented by Stephen J. Knorr.

The defendant pleaded guilty July 15, 1997, to Count 1 of the Superseding Information. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

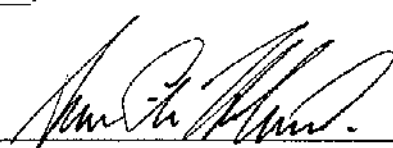
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 2113(b)	Larceny of Bank Money	1/28/97	1

As pronounced on October 17, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

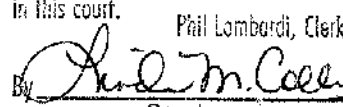
It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Superseding Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21st day of OCTOBER, 1997.


The Honorable Sven Erik Holmes
United States District Judge

United States District Court)
Northern District of Oklahoma) SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.
Phil Lombardi, Clerk

By 
Deputy

Defendant's SSN: 443-66-2935

Defendant's Date of Birth: 5/24/60

Defendant's residence and mailing address: 1409 N. 24th W. Place, Tulsa OK 74127

①

Defendant: THRESSA D. DORSEY
Case Number: 97-CR-058-01-H

PROBATION

The defendant is hereby placed on probation for a term of five (5) year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of four (4) months, to commence within 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: THRESSA D. DORSEY
Case Number: 97-CR-058-01-H

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$4,580.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Local America Bank Attn: Chris Turner P.O. Box 26020 Oklahoma City, OK 73116	\$4,580.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: THRESSA D. DORSEY
Case Number: 97-CR-058-01-H

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	9
Criminal History Category:	I
Imprisonment Range:	4 months to 10 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 1,000 to \$ 10,000
Restitution:	\$ 4,580.00

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

OCT 23 1997

UNITED STATES OF AMERICA
Plaintiff

vs

ANTHONY TYRONE MARTIN
Defendant

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case Number: 91-CR-133-001-E

ENTERED ON DOCKET

DATE 10/24/97

JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF SUPERVISED RELEASE

Now on this 17th day of October 1997, this cause comes on for sentencing after a previous finding that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on August 12, 1997. The defendant is present in person and represented by counsel, Rob Nigh. The Government is represented by Assistant U.S. Attorney Rob Raley, and the United States Probation Office is represented by Randall Drew.

The defendant was heretofore, on October 30, 1992, sentenced after a plea of guilty to a one-count Indictment which charged Possession of a Firearm after Prior Felony Conviction, in violation of Title 18, U.S.C. § 922 (g)(1). The defendant was sentenced to twenty-one (21) months in the custody of the U.S. Bureau of Prisons with a two year term of supervised release to follow. In addition to the standard conditions, the Court ordered that Martin participate in drug treatment as directed by the Probation Office. On October 17, 1997, the defendant's supervised release was revoked after his stipulation

United States District Court
Northern District of Oklahoma
By Phil Lombardi, Clerk
Deputy
ss
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

to all allegations contained in the Petition on Supervised Release. The Court found cause to revoke based on both of the allegations contained in the Petition.


Now at sentencing, the Court finds that the violations occurred after November 1, 1987, and that Chapter 7 of the U.S. Sentencing Guidelines is applicable. Further, the Court finds that the violations of probation constitute Grade C violations in accordance with U.S.S.G. 7B1.1(a)(3), and that the defendant's original Criminal History Category of III is applicable for determining the imprisonment range. In addition, the Court finds that a Grade C violation and a Criminal History Category of III establish a revocation imprisonment range of five to eleven months. In consideration of these findings, and pursuant to U.S. vs. Lee, 957 F.D. 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 are not mandatory, but must be considered by the Court, the following is ordered:

The defendant is committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of five months. The \$500.00 fine originally imposed is hereby rescinded to include all accrued interest.

The defendant is remanded to the custody of the U.S. Marshal.

IT IS SO ORDERED.

This 23rd day of October, 1997.


The Honorable James O. Ellison
Senior United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

OCT 23 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)

Plaintiff)

VS)

Case Number: 89-CR-107-003-E

YVONNE CROSS)

Defendant)

ENTERED ON DOCKET

DATE 10/24/97

ORDER REVOKING SUPERVISED RELEASE

Now on this 17th day of October, 1997, this cause comes on for sentencing concerning allegations that Cross violated conditions of supervised release as set out in the Petition on Supervised Release filed on January 28, 1997. The defendant is present in person and represented by counsel, James Brandon. The Government is represented by Assistant U.S. Attorney James Swartz, and the United States Probation Office is represented by Greg Johnson and Doug Burris.

The defendant was heretofore convicted on her plea of guilty to Counts One and Three of a four-count Superseding Indictment, charging Aiding and Abetting in the Possession with Intent to Distribute Cocaine Base, in violation of 18 U.S.C. § 2, 21, 841, 846.

United States District Court
Northern District of Oklahoma) ss
I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

By Bruce M. Callaway
Deputy

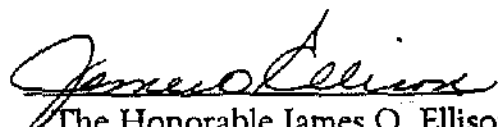
(b)(1)(B), 841(a)(2), and 841(b)(1)(C) . On January 11, 1990, she was sentenced to sixty (60) months, with a five (5) year term of supervised release to follow. Cross was also ordered to pay a \$50 Special Monetary Assessment, and to comply with urinalysis as directed by the probation officer.

On March 18, 1997, a Revocation Hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on January 28, 1997, said allegation being that on November 25, 1994, the defendant committed new law violations: Grand Larceny and Trespass. The Petition further alleged that Cross had used cocaine and failed to report as directed. Cross stipulated to the violations at the revocation hearing, and sentencing was set for April 8, 1997. However, the defendant did not attend the scheduled sentencing herein due to being confined in a state case outside the Northern District of Oklahoma. A bench warrant was issued and sentencing was re-scheduled for October 17, 1997.

On October, 1997, as a result of the Sentencing Hearing, the Court found that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the most serious violation of supervised release, Grand Larceny, constituted a Grade B violation in accordance with USSG § 7B1.1(a)(2), and that the defendant's original criminal history category of I was applicable for determining the imprisonment range. In addition, the Court found that

a Grade B violation and a criminal history category of I establish a revocation imprisonment range of four (4) to ten (10) months. In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant is committed to the custody of the U. S. Bureau of Prisons to be imprisoned for a term of twelve (12) months. In arriving at this decision, the Court considered the defendant's long history of drug abuse and self destructive behavior. Without long-term treatment and prolonged absence from controlled substances, Cross is likely to cause further harm to herself. The Court recommends that the defendant be placed in the next available Bureau of Prisons Intensive Substance Abuse Program. Cross is remanded to the U.S. Marshal pending her placement with the Bureau of Prisons.


The Honorable James O. Ellison
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

OCT 21 1997 *lw*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY HILL,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 93-CR-10-B

ENTERED ON DOCKET

DATE OCT 23 1997

ORDER

At issue before the Court is the Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 filed by defendant Billy Hill ("Hill"). (Docket # 27). After review of the record and applicable legal authorities, the Court concludes Hill's Motion should be and is hereby **DENIED**.

FACTS

Hill was indicted on February 3, 1993 for violating 18 U.S.C. § 922(g)(1), felon in possession of a firearm. The government then filed notice that it was seeking to have Hill sentenced as an armed career criminal pursuant to the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). Per the prerequisites of the ACCA, the government cited three prior convictions as a basis for enhancing Hill's sentence: (1) a June 4, 1980 Kansas conviction for aggravated robbery; (2) a February 2, 1973 Kansas conviction for aggravated robbery; and (3) an October 19, 1966 Oklahoma conviction for second degree burglary.

At the sentencing hearing on June 4, 1993, Hill objected to the use of the 1966 Oklahoma conviction as a predicate for enhancement. The objection was overruled by the Court. Hill was sentenced to be imprisoned for 235 months as an armed career criminal. Hill appealed this decision. On September 27, 1994, a panel of the Tenth Circuit Court of Appeals reversed Hill's sentence on

the basis of its conclusion that the government had failed to prove that the Oklahoma 1966 conviction constituted a violent felony. *United States v. Hill*, 36 F.3d 978 (10th Cir. 1994). On November 18, 1994, the government filed a petition for rehearing, citing the Appeals Court's unpublished decision in *United States v. Couch*, No. 93-6383, 1994 WL 242205 (10th Cir. June 7, 1994) in which an enhancement had been upheld on facts almost the same as in Hill's case. On December 7, 1994 the Court *sua sponte* ordered *en banc* consideration of the case to resolve the apparent discrepancy. In its *en banc* opinion, the Tenth Circuit Court of Appeals affirmed the district court's sentence. *United States v. Hill*, 53 F.3d 1151 (10th Cir. 1995).

In the instant motion, Hill raises the following issue: the 1972 Kansas conviction was not a proper basis for an enhancement under 18 U.S.C. § 924(e)(1). The conviction was fully discharged on February 1, 1979, and pursuant to Kansas law all of Hill's civil rights were restored at that time. Hill refers to various case law to support his argument that an 18 U.S.C. § 924(e)(1) action cannot rest upon a conviction which was subsequently discharged so as to restore his civil rights. According to 18 U.S.C. § 921(a)(20),

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

However, the government argues convincingly that Hill is procedurally barred from raising this claim, since it was not raised on direct appeal.

It is well settled that a § 2255 motion is not available to test the legality of matters which should have been raised on direct appeal. *United States v. Cook*, 997 F.2d 1312, 1320 (10th Cir. 1993). A defendant's failure to present an issue on direct criminal appeal bars him from raising the

issue in his § 2255 motion, unless he can show cause excusing his procedural default and actual prejudice resulting from the errors of which he complains, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. *Id.* To establish cause, there must be a showing of some external impediment preventing a claim from being raised. *Murray v. Carrier*, 477 U.S. 478, 492 (1986). Ignorance or inadvertence does not constitute cause, nor does failure to recognize the factual or legal basis for a claim. *Id.* at 486-87.

Because the government raises procedural bar here, the Court must act upon it unless Hill shows cause and prejudice or a miscarriage of justice. *United States v. Allen*, 16 F.3d 377 (10th Cir. 1994). The only reason given by Hill in his § 2255 motion for bringing this claim now and not at the time of the direct appeal was that he had only recently become aware that his civil rights had been restored as a result of the discharge. As stated above, ignorance or inadvertence does not constitute cause, nor does failure to recognize the factual or legal basis for a claim. *Carrier*, 477 U.S. at 486-87. The Court therefore is constrained to bar Hill's § 2255 motion on procedural grounds.

Furthermore, even if Hill's § 2255 motion were not barred procedurally, it is unsupportable on its merits. In *United States v. Burns*, 934 F.2d 1157 (10th Cir. 1991), the Court held that whether a discharge restores all of a convicted felon's civil rights must be determined by examining the entirety of state law, and not just on the basis of the certificate which grants the restoration.¹ *Id.* at 1159. Under Kan. Stat. Ann. § 22-3722 (West 1997), a discharge restores all civil rights lost by the


¹The Circuits are split on the issue of whether a state document purporting to restore all of a felon's civil rights should be read to incorporate a state statutory firearm restriction. Some take the position adopted by the Tenth Circuit that the state statutory code must be read as a whole, so as to incorporate the restriction into the documents. *United States v. Burns*, 934 F.2d 1157, 1159-61 (10th Cir. 1991); *United States v. McLean*, 904 F.2d 216, 218 (4th Cir. 1990); and *United States v. Cassidy*, 899 F.2d 543, 549 (6th Cir. 1990). On the other side of the issue are *United States v. Glasser*, 14 F.3d 1213, 1218 (7th Cir. 1994); *United States v. Thomas*, 991 F.2d 206, 213 (5th Cir. 1993); and *United States v. Herron*, 45 F.3d 340, 343 (9th Cir. 1995); *United States v. Bost*, 87 F.3d 1333 (D.D.C. 1996).

convicted felon. However, under Kan. Stat. Ann. § 21-4204(1)(b) (West 1997), it is illegal for a convicted felon to possess a firearm (with a barrel less than twelve inches long) within five years of release from imprisonment.

Taking the Kansas statutes in their entirety, the Court in *Burns* found that the right of a convicted felon to possess firearms had never been restored because he was not out of prison for at least five years. *Burns*, 934 F.2d at 1160-61. As the government here points out, Hill has similarly been consistently incarcerated since the disputed 1973 conviction without an interlude of at least five years. Thus, under 18 U.S.C. § 921(a)(20), the 1973 conviction constitutes adequate grounds to uphold Hill's enhanced sentence under the ACCA.

Accordingly, Hill's Motion to Vacate, Set Aside, or Correct Sentence is **DENIED** in its entirety.

SO ORDERED THIS 21st day of October, 1997.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

OCT 23 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 97-CR-070-01-K

BARRIE JEAN SODER
Defendant.

ENTERED ON DOCKET

DATE 10-23-97

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, BARRIE JEAN SODER, was represented by Darrell Bolton.

The defendant pleaded guilty July 16, 1997, to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such Count, involving the following offense:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(b)	Theft of Bank Monies	3/22/96	1

As pronounced on October 16, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22 day of October, 1997.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 440-84-1273

Defendant's Date of Birth: 10/30/69

Defendant's residence and mailing address: 4221 W. Quincy, Broken Arrow OK 74011

Defendant: BARRIE JEAN SODER
Case Number: 97-CR-070-01-K

PROBATION

The defendant is hereby placed on probation for a term of five (5) year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall serve the first six (6) months in community confinement, as scheduled, arranged, and approved by the U. S. Probation Office. The defendant may be allowed to maintain employment while in community confinement.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: BARRIE JEAN SODER
Case Number: 97-CR-070-01-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$14,358.53.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
F & M Bank Attn: Joe Kidwell 8101 S. Memorial Tulsa OK 74137	\$14,358.53

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: BARRIE JEAN SODER
Case Number: 97-CR-070-01-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 14,358.53

The fine is waived or is below the guideline range because of the defendant's inability to pay and the defendant's need for restitution.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

Handwritten signature

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 20 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALMETRA RENEE EDWARDS,

Defendant.

No. 91-CR-59-B

ENTERED ON DOCKET

DATE OCT 21 1997

ORDER

Before the Court is the Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. §2255 filed by defendant Almetra Renee Edwards ("Edwards"). (Docket No. 51). Edwards argues that her conviction for using and carrying a firearm during a drug trafficking offense, in violation of 18 U.S.C. §924(c), should be vacated in light of the United States Supreme Court's ruling in *Bailey v. United States*, 116 S.Ct. 501, 506 (1995). The Government objects to the motion.¹

On July 23, 1991, Edwards was convicted of eight counts of an indictment after a jury trial: Counts I, II and III - distribution of cocaine base in violation of 21 U.S.C. §841(a)(1); Count IV - attempt to possess with intent to distribute cocaine in violation of 21 U.S.C. §846; Count V - using and carrying a firearm during a drug trafficking offense in violation of 18 U.S.C. §924(c); Counts VI, VII and VIII- use of a communication facility in facilitating distribution of cocaine base in violation of 21 U.S.C. §843(b). Her codefendant, Anita Maxey ("Maxey") was convicted of Count IV and V.

Count V specifically charged that

¹ Edwards filed a Motion for Trial and Court Records (Docket No. 56), in which she requested copies of the Indictment and trial and sentencing transcripts to assist her in this §2255 motion. The Court granted the motion on July 22, 1997 and directed Edwards to file any supplement she wished to file within twenty (20) days of the order. Edwards never file a supplement to the record. The Court thus considers Edwards' §2255 motion at issue.

On or about April 16, 1991, in Tulsa, Oklahoma, within the Northern District of Oklahoma, the defendants, ALMETRA RENEE EDWARDS and ANITA LOUISE MAXEY, knowingly **used and carried** firearms during and in relation to a drug trafficking crime of attempt to knowingly and intentionally possess with the intent to distribute cocaine, a Schedule II Controlled Substance, for which they may be prosecuted in a Court of the United States, to wit: ALMETRA RENEE EDWARDS knowing[sic] used and carried a .38 caliber Smith & Wesson Model 49 revolver, serial number J861595 and ANITA LOUISE MAXEY knowingly used and carried a .22 caliber RG revolver, Serial No. 290679, all in violation of Title 18, United States Code, Section 924(c).

(emphasis added). The only instructions given to the jury pertaining to this Count were the following:

Statute Defining the Offense in Count Five

Title 18, United States Code, Section 924(c) provides in pertinent part the following: Whoever, during and in relation to any . . . drug trafficking crime . . . uses or carries a firearm, shall . . . be guilty of an offense against the laws of the United States.

Essential Elements of the Offense Charged in Count Five

The Defendants, Almetra Renee Edwards and Anita Louise Maxey, are charged in Count Five of the Indictment with using and carrying firearms during and in relation to a drug trafficking crime in violation of section 924(c) of title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

- First: The defendant committed the crime of drug trafficking as charged in Count Four of the Indictment; and
- Second: During and in relation to the commission of that crime, the defendant knowingly used or carried a firearm.

Edwards argues that her conviction on Count V should be vacated because the evidence is insufficient to establish "use" of a firearm under *Bailey*. The government contends that *Bailey* does not affect the §924(c) conviction because Edwards was charged with using **and** carrying a firearm. While the evidence of "use" of a firearm is insufficient under *Bailey*, the evidence clearly supports a finding that Edwards "carried" a firearm during and in relation to the commission of a drug trafficking offense; thus Edwards' §924(c) conviction must be affirmed under the "carry"

prong. Edwards claims the only evidence of carrying a firearm is the testimony of government informant, Neil Morrow ("Morrow"), and his testimony is insufficient and lacks credibility because she was entrapped by Morrow, a known drug addict.²

In *Bailey*, the Supreme Court expressly distinguished the "use" from the "carry" prong of §924(c). Concluding that a §924(c) conviction for "use" requires the defendant to have "actively employed the firearm during and in relation to the predicate crime," the Court explained that "use" of a firearm does not subsume "carrying" a firearm. *Id.* at 508-09. The only effect *Bailey* had on the "carry" prong of the statute was to reiterate that criminal liability attaches under both the "use" and "carry" prongs and Congress intended "each term to have a particular, nonsuperfluous meaning," *id.* at 507, 509. Thus, the pertinent inquiry is whether there is sufficient evidence that Edwards carried a firearm during and in relation to a drug trafficking crime so as to uphold the §924(c)(1) conviction.

The Tenth Circuit has defined the "carry" prong of §924(c)(1) as requiring two elements: "possession of the weapon through the exercise of dominion or control; and transportation of the weapon." *United States v. Spring*, 80 F.3d 1450, 1465 (10th Cir.1996). The proof required for conviction is (1) Edwards committed the underlying drug trafficking crime; (2) Edwards carried a weapon; and (3) the carriage of the weapon was during and in relation to the drug trafficking crime. *United States v. Richardson*, 86 F.3d 1537, 1546 (10th Cir.1996).

The Court has reviewed the trial transcript and concludes that there is sufficient evidence to support Edwards' 924(c) conviction under the "carry" prong. The underlying drug trafficking

² Edwards did not seek an instruction on entrapment nor did she raise this issue on appeal. It is well settled that a §2255 motion is not available to test the legality of matters which should have been raised on direct appeal. *United States v. Cook*, 997 F.2d 1312, 1320 (10th Cir.1993).

offense was the attempt to purchase cocaine from Morrow on April 16, 1991. The evidence at trial was that Edwards contacted Morrow about purchasing a large quantity of cocaine. Morrow agreed and set up a drug buy with the assistance of DEA agent Dorsey Leslie Shannon, Jr. ("Shannon"). On April 16, 1991 Edwards drove with Maxey in a blue Chevrolet Celebrity, Oklahoma license ESI-26, to a parking lot near 71st Street and Sheridan in front of Morrow's place of business. Morrow got into the car and counted the money Edwards gave him in a brown sack. While he was in the car, Edwards and Maxey showed Morrow that they were armed. Although it had been agreed that Edwards and Maxey would purchase \$10,000 worth of cocaine, Edwards brought only \$8000. Morrow refused Maxey's request to receive the rest on credit, but told Edwards and Maxey that he would call to see if he could sell \$8000 worth. The three of them went into Morrow's office and Morrow called Shannon who agreed to a sell of \$8000 worth of cocaine (16, instead of 20 ounces), and instructed Morrow to meet him at the Park Plaza Hotel off of Skelly Bypass and Yale. When they walked to the car, they discovered that the keys were locked inside. Edwards asked Morrow to try to break into the car. While he was attempting to kick in the back window, a police car pulled up and two police officers approached him asking "What do you think you're doing to that car, boy?" When Morrow answered that he was trying to get into the car "for these ladies, they're patrons of mine at my business," the police officers asked Edwards and Maxey for identification. At that point several cars of federal agents drove up and told Morrow, Edwards and Maxey to put up their hands and stay still. *Trial Transcript, pp. 39-42; 97-98.*

The police searched Edwards and Maxey at the scene and removed a .22 caliber revolver from Maxey's right pocket and a Smith & Wesson model 49 .38 special with five bullets

from Edwards' right front coat pocket. *Trial Transcript*, pp. 121, 136, 139. Also found in Edwards' pocket were scraps of paper containing dollar amounts and quantities which matched the drug transaction described by Morrow:

There is the number \$10,000. Underneath it is written 560 grams, which is how much they were getting for \$10,000, which equals 20 ounces, which is written under that.

Then on this other piece of paper they have 500, the number 500 written. Underneath it, 16, the number 16, OZ next to it, which stands for ounces.

And then the numbers at the very bottom of the sheet is \$8,000 with the word "cash" written next to it, which is how much money they ended up with. So it looks by the math here it was deducted, that they would get 16 ounces for 8,000 as they would get 20 ounces for 10,000, and that's the math that's in front of me.


Trial Transcript pp. 43-44; 119-121, 136; 138-143; *Trial Exhibit 18*. Also recovered from the floorboard in the right rear of the blue Celebrity was a brown sack containing \$7,940 in currency, and from the trunk, a set of triple-beam scales. *Trial Transcript*, pp. 98-99; 143-45.

Physically "carrying" a firearm hidden in the clothing during a drug transaction is exactly the type of situation which the *Bailey* Court cited to distinguish "carry" from "use" under §924(c). *Bailey*, 116 S.Ct. at 507 ("Under the interpretation we enunciate today, a firearm can be used without being carried, e.g., when an offender has a gun on display during a transaction, or barter with a firearm without handling it; and a firearm can be carried without being used, e.g., when an offender keeps a gun hidden in his clothing throughout a drug transaction"); *see also United States v. Mitchell*, 104 F.3d 649, 653 (4th Cir.1997) ("A defendant actually possessing a firearm and conveying it on his person -- either in his hand, his clothing, or in a satchel he is holding -- during a drug transaction is perhaps the clearest example of a violation of the 'carry' prong of §924(c)(1)"). "Evidence is sufficient to support a criminal conviction if a reasonable jury could find the defendant guilty beyond a reasonable doubt, given the direct and circumstantial

evidence, along with reasonable inferences therefrom, taken in a light most favorable to the government." *United States v. Mains*, 33 F.3d 1222, 1227 (10th Cir.1994). The Court finds that a jury could reasonably conclude from the evidence presented at trial that Edwards carried a firearm during and in relation to the drug transaction.

Accordingly, Defendant's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. §2255 (Docket No. 51) is DENIED.

SO ORDERED THIS 20th day of October, 1997.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE COURT

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

OCT 20 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

v.

Case Number 97-CR-05-01-BU

JAMES DODSON VIEFHAUS
 Defendant.

10-21-97

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, JAMES DODSON VIEFHAUS, was represented by Craig Bryant.

The defendant was found guilty on July 25, 1997 on Counts 1, 2, & 3 of the Superseding Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	12/13/96	1
18 USC 844(e)	Willfully Using a Telephone to Make a Bomb Threat	12/13/96	2
18 USC 5861(d)	Possession of a Non-registered Destructive Device	12/13/96	3

As pronounced on October 16, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 1, 2, & 3 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant: JAMES DODSON VIEFHAUS
Case Number: 97-CR-05-01-BU

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 38 months as to Counts 1, 2, & 3, said counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the defendant's place of incarceration in a facility near his family in Tulsa, Oklahoma.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JAMES DODSON VIEFHAUS
Case Number: 97-CR-05-01-BU

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1, 2, & 3, said counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall perform 100 hours of community service.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the court or probation officer.

Defendant: JAMES DODSON VIEFHAUS
Case Number: 97-CR-05-01-BU

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	20	
Criminal History Category:	I	
Imprisonment Range:	33 months to 41 months	Cts. 1, 2, & 3
Supervised Release Range:	2 to 3 years	Cts. 1, 2, & 3
Fine Range:	\$ 7,500 to \$ 75,000	Cts. 1, 2, & 3
Restitution:	\$ n/a	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 15 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOBBY VERNON McHENRY,
IRVIN CHRISTOPHER McHENRY,

Defendants.

Case No. 97-CR-009-H

ENTERED ON DOCKET

DATE 10-17-97

ORDER

This matter comes before the Court on an oral motion for mistrial by each of Defendant Bobby Vernon McHenry and Defendant Irvin Christopher McHenry. These motions were based on alleged jury misconduct that occurred during the course of the jury trial held in this case from September 29 to October 14, 1997.

"It is well settled that a jury's exposure to extrinsic information gives rise to a rebuttable presumption of prejudice." United States v. Aguirre, 108 F.3d 1284, 1288 (10th Cir. 1997). "To overcome this presumption, the United States must prove the jury misconduct was harmless to the defendant." Id. (citations omitted). In determining whether the United States has met its burden, the Court is required to "objectively weigh all of the facts and circumstances of the case." Id. (citations omitted).


In the instant case, the Court conducted the proceedings required by applicable law to afford the United States the opportunity to prove that the jury misconduct present here was harmless to Defendants. Remmer v. United States, 347 U.S. 227 (1954). Based on these proceedings, the Court determined that over the weekend of October 10 to October 12, a member

of the jury initiated discussions with a third party concerning Defendants, notwithstanding the Court's express instruction not to investigate independently any aspect of the case. This action constituted jury misconduct. Furthermore, the juror communicated to other members of the jury her feelings as a result of such discussions, which feelings reflected negatively on Defendants. Ultimately, virtually every member of the jury became aware of her feelings.

The Court finds that in this case where credibility is a critical issue, jury misconduct that results in such inappropriate communications about Defendants to other members of the jury, without regard to the rules of evidence or cross examination, is clearly prejudicial. Based upon a careful review of all the facts and circumstances of this case, the Court concludes that the United States has failed to prove that the jury misconduct in evidence here was harmless. Accordingly, the motion for mistrial by each Defendant is hereby granted.

IT IS SO ORDERED.

This 15TH day of October, 1997.



Sven Erik Holmes
United States District Judge

DATE 10/16/97

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-060-001-H

FILED
 OCT 10 1997
 Phil Lombardi, Clerk
 U.S. DISTRICT COURT

FAHED JORDAN AL-DBS a/k/a JORDAN SAMUEL
 Defendant.

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, FAHED JORDAN AL-DBS a/k/a JORDAN SAMUEL, was represented by C.W. Damion Jacobs.

On motion of the United States the court has dismissed Counts 2 & 3 of the Indictment.

The defendant pleaded guilty July 3, 1997, to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2320	Trafficking in Counterfeit Goods	2/24/97	1

As pronounced on October 3, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 8TH day of October, 1997.


 The Honorable Sven Erik Holmes
 United States District Judge

Defendant's SSN: 448-94-1723

Defendant's Date of Birth: 03/10/70

Defendant's residence and mailing address: 7443 S. Yale #133, Tulsa OK 74136

Defendant: FAHED JORDAN AL-DBS a/k/a JORDAN SAMUEL
Case Number: 97-CR-060-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 6 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on November 10, 1997.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: FAHED JORDAN AL-DBS a/k/a JORDAN SAMUEL
Case Number: 97-CR-060-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of two (2) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall perform 100 hours of community service.
7. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probations officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: FAHED JORDAN AL-DBS a/k/a JORDAN SAMUEL
Case Number: 97-CR-060-001-H

FINE

The defendant shall pay a fine of \$ 500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: FAHED JORDAN AL-DBS a/k/a JORDAN SAMUEL
Case Number: 97-CR-060-001-H

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	6
Criminal History Category:	1
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 2,000,000
Restitution:	\$ n/a

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

10/15/97

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-12-01-H

FILED
OCT 10 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURTJOHN HUDSON WHITAKER
Defendant.**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, JOHN HUDSON WHITAKER, was represented by Gerald L. Hilsher.

On motion of the United States the court has dismissed Counts 1 & 2 of the Superseding Indictment.

The defendant pleaded guilty August 8, 1996, to Count 1 of the Information. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

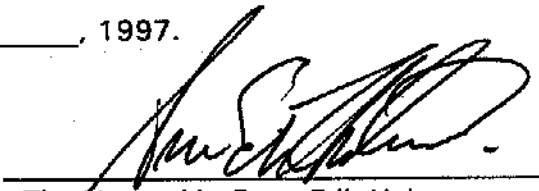
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371, 1952 (a)(3)	Conspiracy to Travel Interstate to Facilitate a Narcotics Enterprise	1/15/96	1

As pronounced on October 3, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 8th day of October, 1997.


The Honorable Sven Erik Holmes
United States District Judge

Defendant's SSN: 448-46-1810

Defendant's Date of Birth: 6/15/54

Defendant's residence and mailing address: 1920 E. 55th Street, Tulsa OK 74105

61

Defendant: JOHN HUDSON WHITAKER
Case Number: 96-CR-12-01-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Defendant participate in Comprehensive Drug Treatment while incarcerated.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on January 15, 1998.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JOHN HUDSON WHITAKER
Case Number: 96-CR-12-01-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JOHN HUDSON WHITAKER
Case Number: 96-CR-12-01-H

FINE

The defendant shall pay a fine of \$ 50,000, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

The defendant is ordered to pay the cost of imprisonment at a rate of \$1,910.17 per month.

The defendant is ordered to pay the cost of supervised release at a rate of \$217.18 per month.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JOHN HUDSON WHITAKER
Case Number: 96-CR-12-01-H

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	25
Criminal History Category:	VI
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ n/a

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 15 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES D. VIEFHAUS, JR.,

Defendant.

Case No. 97-CR-5-BU

ENTERED IN COURT

DATE OCT 15 1997

ORDER

This matter comes before the Court upon the motion of Defendant, James D. Viefhaus, Jr., for a new trial pursuant to Fed.R.Crim.P. 33 or for a judgment of acquittal pursuant to Fed.R.Crim.P. 29(c). Plaintiff, United States of America, has responded in opposition to the motion and upon due consideration of the parties' submissions, the Court finds that the motion should be denied.

On January 9, 1997, Defendant was charged in an Indictment with willfully making a bomb threat in violation of 18 U.S.C. § 844(e) and with possession of a non-registered destructive device in violation of 26 U.S.C. § 5861(d). A Superseding Indictment was filed on March 11, 1997, adding a charge against Defendant of conspiracy to commit offenses against the United States in violation of 18 U.S.C. § 371 and adding Carol E. Howe ("Howe") as a defendant on all charges. Upon the joint request of all parties, Defendant and Howe were granted separate trials. On July 25, 1997, the jury returned a verdict of guilty on all charges against

Defendant. On August 1, 1997, the jury returned a verdict of not guilty on all charges against Howe. Defendant now contends that he is entitled to a new trial or a judgment of acquittal.

Judgment of Acquittal

In considering a motion for acquittal pursuant to Fed.R.Crim.P. 29, the district court must view the evidence in the light most favorable to the government and then determine whether there is sufficient evidence from which a jury might properly find the accused guilty beyond a reasonable doubt. United States v. White, 673 F.2d 299, 301 (10th Cir. 1982). The court is permitted to enter a judgment of acquittal only if the evidence is non-existent or so meager that no reasonable jury could find guilt beyond a reasonable doubt. Id. The district court must refrain from weighing conflicting evidence and from considering the credibility of witnesses. Instead, the court must determine whether the evidence, if viewed in a light most favorable to the government, establishes each element of the charged crime. Id. at 301-302. If so, the court must not disturb the jury's verdict of guilt.

In his motion, Defendant contends that his conviction for conspiracy must be reversed because Howe was acquitted of the same charge by a separate jury. Defendant acknowledges that a criminal conviction ordinarily may not be attacked on the grounds of inconsistent verdicts. However, Defendant maintains that he falls

within the traditional exception to the general rule. That exception, known as the "rule of consistency," requires that a defendant's conspiracy conviction be reversed when all other alleged perpetrators of the conspiracy are acquitted. See, Hartzel v. United States, 322 U.S. 680, 682 n.3, 64 S.Ct. 1233, 1234 n.3, 88 L.Ed. 1534 (1944); United States v. Suntar Roofing, Inc., 897 F.2d 469 (10th Cir. 1990). Defendant argues that even though the Superseding Indictment charged that he and Howe conspired with other persons, no other persons were identified in the Superseding Indictment and there was no evidence introduced at trial on which the jury could have reasonably found the existence of a conspiracy involving Defendant and any other person except Howe. Because Howe was acquitted of the charge of conspiracy, Defendant contends that his conviction of conspiracy must be reversed.

In response, the Government contends that the "traditional exception" raised by Defendant does not apply to this case. Contrary to the assertions of Defendant, the Government maintains that co-conspirators other than Howe were referred to in the Superseding Indictment and were identified at trial. Specifically, the Government refers to Johnny Gamble and Jessie Allison. The Government states that Mr. Gamble, who was leader of the "Fourth Reich," the youth organization which was part of the National Socialist Alliance of Oklahoma, testified about the actions he and others took on behalf of that organization, and his discussions

with Defendant, Howe and Mr. Allison regarding building a bomb. It also states that Mr. Allison testified that he was present at a meeting between Defendant, Howe and Mr. Gamble at which racist literature was distributed. Additionally, the Government states that Mr. Allison, Mr. Gamble, Howe and Defendant discussed building a bomb which Mr. Allison would wire and Howe would introduce into a public building. According to the Government, this evidence is sufficient to defeat Defendant's motion.

The Government also argues that the motion should be denied because the "traditional exception" most likely will be abrogated by the Tenth Circuit based upon the United States Supreme Court's decision in United States v. Powell, 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984). The Government notes that the majority of circuit courts follow Powell and no longer apply the rule of consistency.

In Romontio v. United States, 400 F.2d 618 (10th Cir. 1968), cert. dismissed, 402 U.S. 903, 91 S.Ct. 1384, 28 L.Ed.2d 644 (1971), the Tenth Circuit joined several other circuits in adopting the rule of consistency, holding that a sole conspiracy conviction must be reversed when all other alleged perpetrators of the conspiracy are acquitted. Subsequently, in Powell, supra., the Supreme Court reaffirmed the general rule that inconsistent verdicts do not require reversal of a lone conspiracy conviction. The Supreme Court stated that "where truly inconsistent verdicts

have been reached, '[t]he most that can be said . . . is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt.'" Id. at 64-65, 105 S.Ct. at 476, (quoting Dunn v. United States, 284 U.S. 390, 393, 52 S.Ct. 189, 190, 76 L.Ed. 356 (1932)). The Court concluded that "[t]he fact that the inconsistency may be the result of lenity, coupled with the Government's inability to invoke review, suggests that inconsistent verdicts should not be reviewable." Id. at 66, 105 S.Ct. at 477. As noted by the Government, most circuit courts, in light of Powell, have reexamined and rejected the rule of consistency. The Tenth Circuit, however, has not yet reexamined this rule.

The Court need not decide the continued vitality of the rule of consistency. The Court finds that the rule of consistency does not apply in this case. As several circuits have recognized, the rule applies only where all co-conspirators are tried jointly and does not apply where co-conspirators are tried separately." See, Cortis v. Kenney, 995 F.2d 838, 840 (8th Cir. 1993); United States v. Walker, 871 F.2d 1298, 1304 n. 5 (6th Cir. 1989); United States v. Irvin, 787 F.2d 1506, 1512 (11th Cir. 1986); United States v. Lewis, 716 F.2d 16, 22 (D.C. Cir.), cert. denied, 464 U.S. 996, 104 S.Ct. 492, 78 L.Ed.2d 686 (1983); United States v. Sangmeister, 686 F.2d 1124, 1126-27 (9th cir. 1982); United States v. Espinosa-

Cerpa, 630 F.2d 628, 331 (5th Cir. 1980). This result is necessary because different juries may hear different evidence; "[t]hat the evidence was insufficient to support a guilty verdict in the one case does not mean that conviction on different evidence in another case was improper." United States v. Roark, 753 F.2d 991 (11th Cir. 1985). In the instant case, Defendant and Howe were tried in separate trials. Therefore, the rule of consistency does not require a reversal of Defendant's conspiracy conviction.

In addition, under Tenth Circuit precedent in United States v. Howard, 751 F.2d 336 (10th Cir. 1984), cert. denied, 472 U.S. 1030, 105 S.Ct. 3507, 87 L.Ed.2d 638 (1985), a defendant's conspiracy conviction will stand if there is sufficient evidence in the record from which the jury could have concluded that a conspiracy existed between the defendant and any unindicted conspirators. In reviewing the sufficiency of the evidence the Court "must view all the evidence, direct and circumstantial, as well as all reasonable inferences drawn therefrom, in a light most favorable to the government." Howard, 966 F.2d at 1364.

Upon review, the Court finds that there was sufficient circumstantial evidence in the record to prove beyond a reasonable doubt that Defendant and an unindicted person were involved in the conspiracy for which Defendant was convicted. The Court therefore finds that Defendant's motion should be denied as to the conspiracy conviction.

Motion for New Trial

The standards for granting a new trial are not as strict as standards for granting a judgment of acquittal. Fed.R.Crim.P. 33 provides that a court may grant a new trial to a defendant "if required in the interest of justice." Additionally, any error that would require reversal on appeal is a sufficient basis for granting a new trial. 3 Charles A. Wright, Federal Practice and Procedure: Criminal § 556 (2d ed. 1982). Although the decision to grant or deny a motion for new trial rests within the discretion of court, United States v. Patterson, 41 F.3d 577, 579 (10th Cir. 1994), such motion is regarded with disfavor and is to be granted with great caution. United States v. Troutman, 814 F.2d 1428, 1455 (10th Cir. 1987). The burden is on the defendant to demonstrate that a new trial should be granted. 3 Charles A. Wright, Federal Practice and Procedure: Criminal § 551 (2d ed. 1982). Unlike a motion for judgment of acquittal, the district court, in reviewing the motion for new trial, may weigh the evidence and consider credibility of evidence. If the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the verdict may be set aside and a new trial granted. 3 Charles A. Wright, Federal Practice and Procedure: Criminal § 553 (2d ed. 1982).

In the instant motion, Defendant also contends that he is entitled to a new trial on his conspiracy conviction because of the

inconsistency of the verdict in light of Howe's acquittal. For the same reasons discussed above, the Court finds that Defendant is not entitled to a new trial based upon alleged inconsistent verdicts.

Defendant additionally contends that the interest of justice requires a new trial on his convictions of willfully making a bomb threat and possession of a non-registered destructive device. Defendant argues that the length of the jury's deliberations, 12 hours, coupled with the acquittal of Howe, reflects a weakness of the Government's case. Moreover, Defendant contends that the Court committed error in admitting evidence which should have been excluded under Fed.R.Evid. 404(b), specifically, Defendant's possession of firearms, racist literature, Nazi clothing and paraphernalia, and components or lists of components of destructive devices not charged in the Superseding Indictment. Defendant contends that the admission of this evidence cannot be considered harmless.

In response, the Government argues that Defendant has cited to no authority to support his position that the length of the jury deliberations indicates a weakness in the Government's case. Similarly, it argues that Defendant has cited no specific authority for his proposition regarding the admission of the challenged evidence.

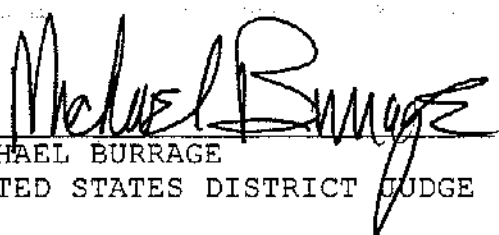
Upon review, the Court finds a new trial is not required in the interest of justice. As noted by the Government, Defendant has

not cited to any authority to support his contention that a new trial is required because lengthy jury deliberations indicate a weak case. The Court concludes that the verdict of guilt on Counts Two and Three of the Superseding Indictment is not contrary to the weight of the evidence and no miscarriage of justice has occurred. As to the Rule 404(b) evidence, the Court is not persuaded that its ruling was erroneous. Under Rule 404(b), evidence of past conduct may be admitted to prove a defendant's motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. United States v. Record, 873 F.2d 1363, 1372 (10th Cir. 1989). The Court finds that the evidence challenged by Defendant is probative of Defendant's motivation, intent or objectives and the Government adequately articulated the purposes for which the evidence was offered at trial. The Court further concludes that the evidence was not unfairly prejudicial to Defendant. Finally, the Court gave a limiting instruction at the time the evidence was introduced and in the jury instructions at the close of the case. The Court concludes that under Huddleston v. United States, 485 U.S. 681, 691, 108 S.Ct. 1496, 1502, 99 L.Ed.2d 771 (1988), the evidence was properly admitted under Fed.R.Evid. 404(b).

Conclusion

Accordingly, Defendant's Post-Motion for New Trial or in the Alternative for Judgment of Acquittal (Docket Entry #102) is **DENIED.**

Entered this 15th day of October, 1997.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED
OCT 10 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD CLARK GARDNER,

Defendant.

Case No. 97-CR-34-H

ENTERED ON DOCKET

DATE 10-14-97

ORDER

Before the Court is the United States of America's motion to dismiss without prejudice counts six and ten of the superseding indictment in the captioned case. IT IS HEREBY ORDERED that the counts six and ten of the superseding indictment are dismissed without prejudice.



SVEN ERIK HOLMES
United States District Judge

48

UNITED STATES DISTRICT COURT

Northern District of Oklahoma ENTERED ON DOCKET

UNITED STATES OF AMERICA

DATE 10-14-97

v.

Case Number 96-CR-114-01-K

FILED

OCT 09 1997

STEVEN W. WILSON
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
DISTRICT COURT

The defendant, STEVEN W. WILSON, was represented by Julia L. O'Connell.

On motion of the United States the court has dismissed Counts 1, 3, 4, & 6 of the Superseding Indictment.

The defendant pleaded guilty February 24, 1997, to Count 2 of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

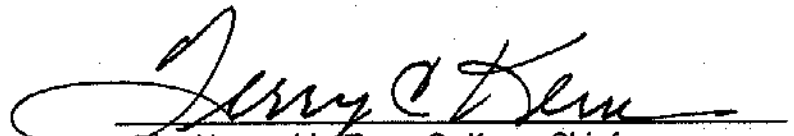
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 841 (a)(1), (b)(1)(B) 18 USC 2	Manufacture of Marijuana by Production, and Aiding and Abetting	8/23/94	2

As pronounced on October 2, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 2 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 8 day of October, 1997.


The Honorable Terry C. Kern, Chief
United States District Judge

Defendant's SSN: 442-44-9119

Defendant's Date of Birth: 9/9/44

Defendant's mailing address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

Defendant's residence address: PO Box 206, Nowata OK 74048

Defendant: STEVEN W. WILSON
Case Number: 96-CR-114-01-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Defendant participate in Comprehensive Drug Treatment at a Bureau of Prisons facility.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: STEVEN W. WILSON
Case Number: 96-CR-114-01-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of four (4) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for substance abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: STEVEN W. WILSON
Case Number: 96-CR-114-01-K

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 10,000, as to Count 2. This fine shall be paid in full immediately. any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: STEVEN W. WILSON
Case Number: 96-CR-114-01-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the Court determined that paragraph 46, wherein USSG § 5C1.2 was applied, does not apply in this case. The Court finds the defendant did not provide truthful information concerning the offense to the Government before the time of the sentencing hearing.

Guideline Range Determined by the Court:

Total Offense Level:	21
Criminal History Category:	I
Imprisonment Range:	60 months
Supervised Release Range:	4 to 5 years
Fine Range:	\$ 7,500 to \$ 2,000,000
Restitution:	\$ n/a

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 8 1997

UNITED STATES OF AMERICA,

Plaintiff,

v.

FELIX RENDON OSUNA and RALPH
MICHAEL BENAVENTE,

Defendants.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 97-CR-110-C

ENTERED ON DOCKET

DATE OCT 09 1997

JUDGMENT OF ACQUITTAL

UPON MOTION OF Defendant Ralph Michael Benavente, premises
considered, it is hereby ordered, adjudged and decreed that he be
and is ACQUITTED on all counts.

DONE this 8 day of oct, 1997.


H. DALE COOK
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 9 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 97-CR-5-BU

JAMES D. VIEFHAUS, JR.,
and CAROL HOWE,

Defendants.


ENTERED ON DOCKET

DATE OCT 9 1997

ORDER

Now on this 8th day of October, 1997, after reviewing Carol E. Howe's Application For Bond Exoneration, this Court Hereby Orders that the Federal Court Clerk of the United States District Court, Northern District of Oklahoma disperse a check in the amount of \$5,000.00 payable to Robert Howe at 6171 South Marion, Tulsa, Oklahoma, 74136.

ENTERED this 8th day of October, 1997.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

FILED

OCT 8 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Robert L. Glover,

Defendant.

Case No. 89-CR-56-E

ORDER

Now before the Court is the §2255 Motion to Vacate, Set Aside, or Correct Sentence by a person in Federal Custody of the defendant Robert L. Glover (Docket #106).

Glover pled guilty to Possession with Intent to Distribute Methamphetamine and now claims that his sentence should be reduced due to the ineffectiveness of counsel in failing to require that the government prove that D-methamphetamine was involved. This court denied Glover's motion. The Court of Appeals, by Order dated October 7, 1996 found that failure to require the government to prove the type of methamphetamine involved at sentencing constituted ineffective assistance of counsel. The Court of Appeals, however, noted a potential procedural obstacle to Glover's §2255 motion in that he had previously attempted to obtain relief under §2255 and did not raise ineffective assistance issue at that time.

The parties have now addressed the issue of whether Glover's motion is subject to dismissal on abuse-of procedure grounds. Rule 9(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts provides:

A second or successive motion may be dismissed if the judge finds that it fails to allege new or different ground for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to addert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.


In order to avoid dismissal under the abuse of writ doctrine with a second §2255 motion, Glover must "excuse his failure to raise the issue earlier by showing 'cause for failing to raise it and prejudice therefrom' or by showing that a 'fundamental miscarriage of justice would result from a failure to entertain the claim.'" U.S. v. Richards, 5 F.3d 1369, 1370 (10th Cir. 1993) (quoting McCleskey v. Zant, 499 U.S. 467 (1991)).

Glover argues that his failure to raise the ineffective assistance of counsel issue in his 1991 §2255 motion is excusable because he did not realize the error until U.S. v. Patrick, 983 F.2d 206 (9th Cir. 1993) was decided. However, "[t]he mere fact that others had not raised this issue first is not sufficient cause. '[T]he question is not whether subsequent legal developments have made counsel's task easier, but whether at the time of the default the claim was 'available' at all.'" Richards, 5 F.3d at 1371 (quoting Smith v. Murray, 477 U.S. 527, 537 (1986)). In this case, Glover makes no effort to demonstrate that the claim regarding the distinction between L-methamphetamine and D-methamphatamine was unavailable at the time of the filing of his first §2255 motion. He merely argues that he did not know of the claim at that time. That the claim was unavailable is defeated by the Court of Appeals' finding that counsel was ineffective for

raising the claim at sentencing, which was prior to the filing of his §2255 motion.

Finding that there is no cause for the failure to raise the ineffective assistance of counsel argument in the first motion, the Court finds that this motion (Docket #106) should be dismissed for abuse of the writ.

SO ORDERED this 7th day of October, 1997.



JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

ENTERED ON DOCKET
 DATE 10-7-97

UNITED STATES OF AMERICA

v.

Case Number 97-CR-040-01-K ✓

DEBRA ELLEN COX
 Defendant.

FILED

OCT 07 1997

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

The defendant, DEBRA ALLEN COX, was represented by Julia L. O'Connell.

The defendant pleaded guilty June 10, 1997, to Count 1 of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Misapply Funds of Federally Chartered Bank	5/96	1

As pronounced on October 2, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 6 day of October, 1997.


 The Honorable Terry C. Kern, Chief
 United States District Judge

Defendant's SSN: 511-62-3165

Defendant's Date of Birth: 10/7/54

Defendant's residence and mailing address: 5152 S. Trenton, Tulsa OK 74105

Defendant: DEBRA ELLEN COX
Case Number: 97-CR-040-01-K

PROBATION

The defendant is hereby placed on probation for a term of five (5) years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of four (4) months, to commence within 72 hours of release of community confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
4. The defendant shall serve the first four (4) months in community confinement, as scheduled, arranged, and approved by the U. S. Probation Office. The defendant may be allowed to maintain employment while in community confinement.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 4) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DEBRA ELLEN COX
Case Number: 97-CR-040-01-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$72,154.93.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Bank of Oklahoma Attn: Lowell Faulkenberry One Williams Center Tulsa OK 74103	\$72,154.93

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: DEBRA ELLEN COX
Case Number: 97-CR-040-01-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the Court finds that the offense did not involve abuse of a position of trust, resulting in a total offense level of 12.

Guideline Range Determined by the Court:

Total Offense Level:	12
Criminal History Category:	I
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ 72,154.93

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): upon motion of the government, as a result of defendant's substantial assistance.

27

ENTERED ON DOCKET

DATE 10-7-97

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SEP 30 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM A. MORGAN,

Defendants.

97-CR-100-K

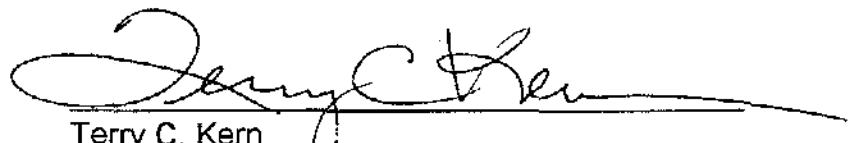
F I L E D

SEP 30 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On this 29th day of September, 1997, leave of this Court is granted to permit the filing of the foregoing Motion for Leave to Dismiss and Pursuant thereto, Count Six of the Indictment filed in this cause on July 7, 1997, shall be and the same is hereby dismissed and Count Seven of the Indictment shall be amended by renumbering said Count as Count Six.


Terry C. Kern
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 01 1997

Phil L
U.S. D
NORTHERN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY L. GREEN, et al.,

Defendants.

Case No. 96-CR-151 /

ENTERED ON DOCKET

DATE 10-3-97

ORDER

This matter comes before the Court on the sentencing of Defendant Jerry L. Green.

Count Two is hereby dismissed according to United States v. Stallings, 810 F.2d 973, 975-76
(10th Cir. 1987).

IT IS SO ORDERED.

This 1st day of October, 1997.



Sven Erik Holmes
United States District Judge

227

DATE OCT 01 1997

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-26-001-H

PERRY A. MCMINN, JR.
 Defendant.

FILED

SEP 29 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, PERRY A. MCMINN, JR., was represented by Craig Bryant.

The defendant was found not guilty June 6, 1997, on Count 4 of the Indictment and is discharged as to such count. IT IS ORDERED that the Defendant is acquitted and discharged, and any bond is exonerated.

The defendant was found guilty June 6, 1997, on Counts 1, 2, & 3 of the Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

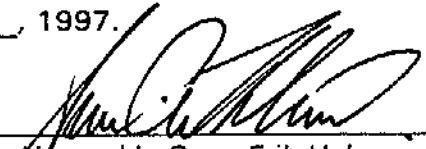
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
8 USC 1151, 1152, & 113(a)(3)	Assault With a Dangerous Weapon	2/6/97	1
18 USC 1151, 1152, & 924(c)	Possession of a Firearm During and in Relation to a Crime of Violence	2/6/97	2
18 USC 1151, 1152, & 113(a)(6)	Assault Resulting in Serious Bodily Injury	2/6/97	3

As pronounced on September 19, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 1, 2, & 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 29TH day of SEPTEMBER, 1997.


 The Honorable Sven Erik Holmes
 United States District Judge

Defendant's SSN: 444-44-7446

Defendant's Date of Birth: 6/29/47

Defendant's residence and mailing address: Tulsa County Jail, 500 S. Denver, Tulsa OK

25

Defendant: PERRY A. MCMINN, JR.

Case Number: 97-CR-26-001-H

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 93 months. This term consists of 33 months as to Counts 1 & 3 , to run concurrently; and 60 months as to Count 2, to run consecutively with Counts 1 & 3, for a total sentence of 93 months.

The Court makes the following recommendations to the Bureau of Prisons: to allow access to drug and alcohol treatment programs.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: PERRY A. MCMINN, JR.

Case Number: 97-CR-26-001-H

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1, 2, & 3, to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
7. The defendant shall not have any direct or indirect contact with or approach within 100 feet of Sally White, the victim.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: PERRY A. MCMINN, JR.
Case Number: 97-CR-26-001-H

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$2,148.59, as to Count 1.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Sally White 106 Cherry Street Box 902 Quapaw OK 74363	\$569.59
Crime Victim Compensation Board 2200 Classen Blvd., Ste. 1800 Oklahoma City OK	\$1,579.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: PERRY A. MCMINN, JR.

Case Number: 97-CR-26-001-H

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the Court finds that the offenses did not involve more than minimal planning as defined in § 2A2.2(b)(1), therefore the offense level is reduced to level 18.

Guideline Range Determined by the Court:

Total Offense Level:	18	
Criminal History Category:	I	
Imprisonment Range:	27 months to 33 months	Counts 1 & 3
	60 months	Count 2
Supervised Release Range:	2 to 3 years	Counts 1, 2, & 3
Fine Range:	\$ 6,000 to \$ 60,000	Counts 1, 2, & 3
Restitution:	\$ 2,148.59	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceeds 24 months, and the sentence is imposed.

12-4
2

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

SEP 29 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA
Plaintiff

VS

STRAP SILVER DAVIS
Defendant

Case Number 96-CR-172-001-H ✓

ENTERED ON DOCKET

DATE 10-1-97

ORDER REVOKING PROBATION

Now on this 25th day of September 1997, this cause comes on for revocation and sentencing concerning allegations that Davis violated conditions of probation as set out in the Petition on Probation filed on July 8, 1997. Davis is present in person and represented by counsel, Stephen J. Knorr. The Government is represented by Assistant United States Attorney, F.L. Dunn, III, and the United States Probation Office is represented by David Plunkett.

On September 25, 1997, a revocation hearing was held regarding the allegation noted in the Petition on Probation, filed on July 8, 1997, said allegation being that on June 30, 1997, at 8:30 p.m., that Davis failed to return to the 12 & 12 treatment center as scheduled, prior to completion of the six months in community confinement as imposed by the Court at sentencing.

During the revocation hearing, Davis stipulated to the violation as alleged in the petition. The Court found that Davis was in violation of the conditions of his release and probation was revoked. The Government and the defendant waived additional time for a sentencing hearing. The Court proceeded with sentencing and found that the conviction occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the violation of probation constituted a Grade C violation in accordance with USSG § 7B1.1(a)(3), and

16

Davis' Criminal History Category of I is applicable for determining the imprisonment range. In addition, the Court found that a Grade C violation and a criminal history category of I establish a revocation imprisonment range of (3) three to (9) nine months in accordance with USSG § 7B1.4(a) and 18 U.S.C. § 3583(e). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.2d 770 (10th Cir. 1992), in which the circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Strap Silver Davis, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of (24) months. The Court recommends that, classification provisions permitting, that Davis be confined in a facility capable of providing comprehensive substance abuse treatment, consistent with the provisions of 18 U.S.C. § 3621(b) and (e).

It is ordered that Davis make restitution in the amount of \$2,833.22 to the victims as delineated in paragraph 60 of the original presentence report. This amount will be paid immediately. Any amount not paid immediately shall be paid while Davis is in custody through the Bureau of Prisons' Inmate Financial Responsibility Program with any remaining amount to be paid during the period of supervised release.


It is further ordered that Davis pay a fine in the amount of \$3,000. This amount will also be paid immediately. Any amount not paid immediately shall be paid while the defendant is in custody through the Bureau of Prisons' Inmate Financial Responsibility Program with any remaining amount to be paid during the period of supervised release.


Upon release from imprisonment, Davis shall be placed on supervised release for a term of 3 years. Within 72 hours of release from custody of the Bureau Of Prisons, Davis shall report in person to the probation office in the district to which he is released. While on supervised release,

Davis shall not commit another federal, state, or local crime, shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following additional conditions:

1. Davis shall not own or possess a firearm or destructive device.
2. Davis shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as he is released from the program by the probation officer.
3. Davis shall abide by the Special Search and Seizure Condition as enumerated in Miscellaneous Order M-128, filed with the Clerk of the Court on May 25, 1995.
4. Davis shall abide by the "Special Financial Conditions" as adopted by the Court.

Davis is remanded to the custody of the U.S. Marshal's Service for immediate transportation to the Bureau of Prisons.


The Honorable Sven Erik Holmes
United States District Judge

United States District Court }
Northern District of Oklahoma } SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court.
Phil Lombard, Clerk
By  Deputy